

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10480-RGS

SILAS CALHOUN AND EMILY
CALHOUN, INDIVIDUALLY, AND AS
PARENTS AND NEXT FRIENDS OF
ESTELLA CALHOUN,

Plaintiffs,

v.

UNITED STATES OF AMERICA,
ERIC C. DAUB, M.D. AND
MARIANNE SUTTON, M.D.,

Defendants.

**MOTION OF DEFENDANT, MARIANNE SUTTON, M.D.,
TO REFER MATTER TO MIDDLESEX SUPERIOR
COURT FOR A MEDICAL MALPRACTICE TRIBUNAL HEARING**

The defendant, Marianne Sutton, M.D. ("Dr. Sutton"), hereby requests that the Court refer the action as solely against Dr. Sutton to the Middlesex Superior Court for a medical malpractice tribunal on the action against her, pursuant to Mass. G. L. c. 231, §60B. In further support of her motion, Dr. Sutton states the following:

1. This is a medical malpractice action, which was filed with the Court on or about March 10, 2004. The plaintiff alleges, in part, that on or about March 3-6, 2000, Dr. Sutton was negligent in failing to appropriately and accurately evaluate, monitor, treat and take precautions in the care of Estella Calhoun.
2. Massachusetts General Laws c. 231, §60B, requires that "every action for malpractice, error or mistake against a provider of health care" be heard "within 15 days after

the defendant's answer has been filed" by a tribunal consisting of a single justice of the Superior Court, and a physician and an attorney licensed to practice in the Commonwealth of Massachusetts.

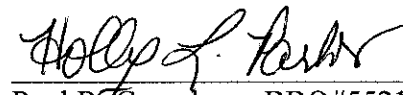
3. Plaintiff's claim against Dr. Sutton is an action for "malpractice error or mistake against a provider of health care". Therefore, the Court must refer the case to the Superior Court for a medical malpractice tribunal hearing. See Feinstein v. Massachusetts General Hospital, 643 F.2d 880 (1st Cir. 1981) (The Rules of Decision Act and the Erie Doctrine require a federal district court sitting in diversity to refer "an action for malpractice, error or mistake against a provider of health care" arising under Massachusetts statute to a medical malpractice tribunal).

4. Dr. Sutton's counsel has conferred with plaintiff's counsel, Anthony Agudelo, who assents to this motion as it pertains solely to defendant Dr. Sutton and no other defendants.

WHEREFORE, the defendant, Marianne Sutton, M.D., hereby requests that the Court allow her motion for the reasons stated above.

The Defendant,
MARIANNE SUTTON, M.D.,

By her attorneys,



Paul R. Greenberg, BBO#552176

Holly L. Parks, BBO#647273

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Dated: I hereby certify that a true copy
of the above document was
served upon the attorney of
record for each party by hand
or mail on 4/13/04
HRP

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April 13, 2004

* Also Admitted

Civil Clerk's Office
United States District Court
District of Massachusetts
1 Court House Way
Boston, MA 02110

Re: Calhoun v. Sutton, et al.
Civil Action No. 04-10480-RGS

Dear Sir/Madam:

Enclosed for filing and docketing please find the following in reference to the above matter:

- (1) MOTION OF DEFENDANT, MARIANNE SUTTON, M.D., TO REFER MATTER TO MIDDLESEX SUPERIOR COURT FOR A MEDICAL MALPRACTICE TRIBUNAL HEARING.

Thank you for your attention to this matter.

Very truly yours,



Paul Greenberg
Holly L. Parks

HLP/jg
Enclosure

cc: Anthony V. Agudelo, Esquire (w/ encl.)